

**Supplemental Letter of Findings: 01-20160609
Individual Indiana Income Tax
For the Years 2010-2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

The Department denied Individual's protest challenging an assessment of additional individual income tax; the assessment was based on information provided by a federal prosecuting attorney and the Individual's plea of guilty to filing false or fraudulent tax returns on behalf of his customers; the Department did not err in relying on the information it obtained.

ISSUE

I. Individual Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the income tax assessed.

STATEMENT OF FACTS

Taxpayer is the owner of a tax return preparation business with multiple locations in Indiana. Acting upon information provided by the Office of the U.S. Attorney for the Southern District of Indiana, the Indiana Department of Revenue ("Department") issued Taxpayer "Proposed Assessments" of additional Indiana income tax for the years 2010 through 2012.

The assessments were based on Taxpayer's plea of guilty for the preparing false federal income tax returns for the customers of his tax preparer business. Under the terms of the plea agreement, Taxpayer acknowledged that he was required to pay the tax that the Internal Revenue Service lost due to these false returns.

Taxpayer challenged the assessment of additional tax. An administrative hearing was held and a Letter of Findings was issued denying Taxpayer's protest. Taxpayer requested a rehearing which was granted. This Supplemental Letter of Findings results and additional facts will be supplied if necessary.

I. Individual Income Tax - Best Information Available Assessment.

DISCUSSION

Taxpayer ran and owned several tax preparation companies. Taxpayer would prepare customers' returns and immediately issue their refund for a fee based on the refund calculated. Taxpayer would then receive its customers' refund check from the Internal Revenue Service ("IRS"). The U.S. Attorney's office determined that Taxpayer was filing fraudulent and false returns on behalf of its customers. The U.S. Attorney's office determined the tax loss from the fraudulent returns was \$1,501,000. Consequently, the Department determined that Taxpayer was unjustly enriched by the \$1,501,000 and assessed income tax based on that amount for the years at issue. Taxpayer argues the amount paid to the IRS was restitution and any fees he received from the fraudulent returns were reported on his Indiana income tax returns. In addition, Taxpayer argues that the Department is outside of the statute of limitations to assess tax for the tax year 2009.

As with any assessment of additional tax, Taxpayer bears the burden of establishing that the Department's adjustment was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie

evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

In this supplemental decision, Taxpayer provided a court record of Taxpayer's "change of plea hearing." Within the record, the investigating IRS agent testified as to the charges and evidence obtained during her investigation of Taxpayer. Taxpayer directed the Department to page 23 of the transcript, which according to Taxpayer shows that "[Agent] stated in no uncertain terms that the fraudulent earned income tax credit, which inflated the customer's tax return, solely benefited the [customers] themselves."

Upon review of the transcript the Department notes the statement made by the Agent is:

[Taxpayer] procured, counseled, and advised his [employees] in preparing and filing federal income tax returns containing Schedule Cs which completely fabricated or fraudulently inflated income and expenses. While the majority of the fraudulent Schedule Cs reported a net profit as earned income, some the Schedule Cs provided a net loss, which reduced the customer's earned income and allowed the customer to receive a larger earned income credit.

By instructing [Taxpayer's employees] to prepare fraudulent Schedule Cs, [Taxpayer] caused the amount of earned income reported on the returns to be dramatically increased. Further, [Taxpayer's] instructions to his tax return preparers maximized the refundable earned income credit for each customer. In doing so, [Taxpayer] significantly increased the customer's refund.

. . .

[The motive for the fraudulent returns was] more people would come into his business, word of mouth.

Taxpayer argues that these statements from the IRS agent show that he received no benefit from the fraudulent filings and therefore the Department was incorrect in assessing him additional income tax.

Taxpayer has provided no other documentation or information to show the Department's assessment incorrect. Taxpayer was asked to provide the appropriate Indiana returns and related documentation to show that the Department's assessment is incorrect. The evidence Taxpayer provided in the rehearing does not clearly state that Taxpayer did not receive additional income from fees for filing fraudulent returns. Furthermore, the Agent was not conducting an income tax audit of Taxpayer, but rather supporting the charges of filing fraudulent returns. The testimony Taxpayer refers to does not support his contention. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessments incorrect.

FINDING

Taxpayer's protest is denied.

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